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1st Session

SENATE

REPORT
No. 98-111

EXPORT-IMPORT BANK AMENDMENTS OF 1983

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 869

together with

ADDITIONAL VIEWS

MAY 16, 1983.—Ordered to be printed

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MAY 16, 1983.—Ordered to be printed

Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 869]

HISTORY OF THE LEGISLATION

Congressional dissatisfaction with the Export-Import Bank's performance of its role of neutralizing subsidized foreign export financing led to Congressional review and consideration of legislation to strengthen the Bank. A bill was first introduced in the 96th Congress by Senators Stevenson, Heinz, Garn, and others on February 26, 1980, as S. 2339, the Competitive Export Financing Act of 1980. A hearing was held on May 22, 1980 before the Committee on Banking, Housing, and Urban Affairs Subcommittee on International Finance. No further action on the bill was taken.

In substantially the same form as its predecessor, the Competitive Export Financing Act of 1981, S. 868, was introduced on April 2, 1981, by Senators Heinz, Garn, Inouye, Tsongas, Cranston, and Williams. The bill required the Export-Import Bank to institute official export financing measures to compete with extraordinary export credit programs offered by other major trading countries. A hearing on the bill was held on July 20, 1981 before the Subcommittee on International Finance and Monetary Policy. The Committee met in open executive session on July 30, 1981 and agreed to report S. 868 favorably with two amendments. No further action was taken on this bill.

A more comprehensive bill to strengthen the Export-Import Bank, the Export-Import Bank Restructuring Act of 1982, S. 2600, was introduced by Senators Heinz, Garn, Mathias, Pressler, Jackson, Specter, Chafee, Lugar, Cranston, and Dixon on May 27, 1982. The legislation provided staggered terms for the Bank's Board of Directors, removed the Bank's cashflow from the outlays section of the unified Federal budget, and created a $2 billion warchest fund to counter foreign pre-

datory export financing and to help our negotiators achieve an international agreement to end the competition in officially subsidized export credit within the Organization for Economic Development and Cooperation.

Further Congressional support was given to this issue when Senate Resolution 458 was referred to the Senate Banking, Housing, and Urban Affairs Committee on September 9, 1982, sponsored by Senators Jackson, Garn, Heinz, Lugar, Chafee, Reigle, Cranston, Sarbanes, Dodd, Dixon, and sixteen others. This resolution was introduced to draw the attention of the authorizing and appropriating committees of jurisdiction, as well as the Export-Import Bank, to the vital need for a strong and aggressive Export-Import Bank, particularly in the context of the impending review of the Bank's charter.

Hearings were held on the Export-Import Bank in the Subcommittee on International Finance and Monetary Policy on September 14 and 16, 1982. Testimony was heard from Senator Henry M. Jackson of Washington; Malcolm Stamper, President of the Boeing Company; James F. Lovett, Director of Federal Government Relations for Westinghouse Corporation; William J. Durka, Manager, International Trade Policy Operation of General Electric; Earl W. Doubet, President of Caterpillar Americas Company; the Labor-Industry Coalition for International Trade, represented by John R. Babson, Vice President of Ingersoll-Rand, and Brian Turner, Director of Legislation and Economic Policy, Industrial Union Department, AFL–CIO; Raymond Garcia, President of the Coalition for Employment through Exports; and Lawrence Fox, Vice President for International Economic Affairs, of the National Association of Manufacturers. On the second day of hearings testimony was received from William Brock, the United States Trade Representative; William H. Draper III, Chairman and President of the Export-Import Bank; Lionel Olmer, Under Secretary of Commerce for International Trade; Marc Leland, Assistant Secretary of Treasury for International Affairs; William D. Trammel, Senior Manager, Project Financing, Fluor Corporation, representing the National Constructors Association; Robert Best, Executive Vice President of the American League for Exports and Security Assistance; Evan Werling, Vice President and Treasurer, the French Oil Mill Machinery Company; Harold E. Weaver, Senior Vice President and Manager of Data Graphics of the Continental Graphics Company; and Virginia Foote, Associate Director of the Center for Development Policy.

The Committee met in open executive session on September 30, 1982, and agreed to report S. Res. 458 by a voice vote, Senator Proxmire dissenting.

No further action was taken on either S. 2600 or S. Res. 458 in the 97th Congress.

At the beginning of the 98th Congress, S. 869, the "Export-Import Bank Amendments of 1983" was introduced by Senators Heinz, Garn, Jackson, Kassebaum, Gorton, Cochran, Mattingly, Grassley, Dixon, and Abdnor. Hearings were held on the Export-Import Bank in the Subcommittee on International Finance and Monetary Policy on March 22 and 24, 1983. Testimony was received from William H. Draper III, Chairman and President of the Export-Import Bank; William Morris, Jr., Assistant Secretary of Commerce for Trade

Development; William K. Krist, Assistant U.S. Trade Representative for Industrial and Energy Trade Policy. On the second day of hearings testimony was received from the Coalition for Employment through Exports, represented by James McMillan, President, McDonnel Douglas Finance Corporation, and Leonard Ricks, National Chairman, Council of Engineers and Scientists Organization; the National Foreign Trade Council, represented by William A. Coates, Executive Vice President, Westinghouse Electric Corporation; the Labor-Industry Coalition for International Trade, represented by Howard Samuel, President, Industrial Union Department, AFL–CIO, and Clyde Folley, Senior Vice President, Ingersoll-Rand; and the American League for Export and Security Assistance, represented by William Faulkner, Vice President and Assistant to the Chairman, American Hoist and Derrick Company, and John Morgan, Assistant to the Executive Vice President, Communications Workers of America, AFL–CIO.

The Committee met in open executive session on April 28, 1983, and agreed to report S. 869 favorably, with eight amendments, by voice vote, Senator Proxmire dissenting.

EXPLANATION OF THE PROVISIONS OF S. 869

Competitive mandate

The Committee noted that confusion over the mandate given by law to the Export-Import Bank for the conduct of its programs has resulted in the unnecessary loss of export sales by United States exporters. For although the Committee would agree with Eximbank Director Richard W. Heldridge that the Congress has made it clear that the Bank's first priority is to provide competitive financing, others, such as Eximbank Chairman William Draper, have asserted that the language of the Bank's charter is unclear, and that the Bank's mandate to provide United States exporters with competitive financing carries no more than equal weight with the need to keep the Export-Import Bank self-sufficient. This last objective, it is argued, is mandated by language in section 2(b)(1)(B) of the Export-Import Bank Act of 1945 requiring the Directors to consider the cost of money in setting the Bank's loan rates.

In practice this policy of giving equal weight to the two objectives has resulted, in times of high commercial rates and strong foreign government-subsidized export credit competition, in the competitiveness mandate taking second place to the self-sufficiency objective. For example, in fiscal year 1982 Eximbank direct loan rates were several hundred basis points above those allowable under international agreement and offered by our major trade competitors. The Eximbank argued that these rates, along with a two percent up front financing fee, were necessary for the Bank to avoid excessive losses due to its currently high cost of funds.

The result, however, was the loss of U.S. export business to foreign competitors able to offer the cheaper financing made available by their official financing agencies. In hearings before the Subcommittee on International Finance and Monetary Policy in September of 1982, Under Secretary of Commerce for International Trade, Lionel Olmer, testified that well over $1 billion of U.S. export sales were lost in fiscal year 1982 due to inadequate Eximbank support. During the same time

period the Bank failed to use approximately $1 billion of its direct loan authority.

Section 101 of S. 869 reflects the Committee's desire to make it absolutely clear that the first priority of the Export-Import Bank, its chief mandate, is to be competitive. The Bank's cost of money is an appropriate factor to be considered in setting interest rates on its loans, but this should not be applied to the detriment of the competitiveness of the Bank's financial support programs for U.S. exports. The Bank need not mirror in every detail foreign officially subsidized export credit offers, but all of the Bank's programs should be fully competitive so as to neutralize the effect of official credit as a factor in international sales competition, including those Eximbank programs for small businesses and for medium-term financing.

The Committee recognizes that continued Congressional support for a fully competitive Eximbank, along with the Bank's willingness to improve selectively various financing offers by extending the repayment term, has been a major factor in the success achieved in the negotiations to limit official export financing. As a result of the latest round of talks on export credits within the Organization for Economic Cooperation and Development, along with the steady decline in commercial interest rates, the subsidy element in official export financing has been virtually eliminated for all of the major OECD countries, with the exception of France. This is significant progress when it is recalled that ony three years ago, in 1980, the OECD estimated that member countries were spending $5.5 billion annually in export credit subsidies. A continually competitive Eximbank, with continued strong support from the Congress, is essential for further success in the credit talks, until the goal of permanently eliminating official export credit as a factor in international sales competition is achieved.

Advisory committee

The Committee considers cooperation with the export community essential for the Export-Import Bank to meet its responsibility to be responsive to the needs of American exporters and to keep fully aware of development and conditions in international markets. Section 102, reestablishing the Eximbank Advisory Committee, reflects this view of the Committee. This cooperation is enhanced by provisions to expand the membership of the Advisory Committee and to permit members of the Advisory Committee to attend meetings of the Bank's Board of Directors. Members of the Advisory Committee would be expected to excuse themselves from such meetings at any time necessary to avoid the appearance of any conflict of interest. The Committee strongly hopes that the President of the United States will continue to reauthorize the Eximbank Advisory Committee in keeping with the provisions of the Federal Advisory Committee Act (P.L. 92–463).

Terms of directors

Through its programs the Export-Import Banks has an important and wide ranging impact upon the United States economy Virtually every State in the Union benefits from export sales made possible by Eximbank assistance. Moreover, some of our most important high technology and strategically significant industries rely heavily for their prosperity on export sales that are directly affected by official export credit competition. With the important and highly leveraged impact

that the Bank has on the whole economy, the Committee considers it important to reduce the opportunity for politicizing the Eximbank. Section 103 of the bill increases the independence of the members of the Board of Directors of the Eximbank by giving them fixed, four year terms of office.

Currently, the members of the Eximbank Board serve at the pleasure of the President. With fixed terms of office they would enjoy some of that insulation necessary for them to comply with Congressional mandate that, for example, is enjoyed by the Board of Governors of the Federal Reserve System. The Committee notes with approval the emphasis that the President has given to adequate export financing, as indicatd in his most recent address to the Congress on the State of the Union. Unfortunately, this appreciation of the importance of the Export-Import Bank has not always been shared by key members of the Administration. This has resulted in policies adopted by the Bank that have thwarted Congressional intent.

For example, although the Congress authorized the Bank to make $4.4 billion dollars in direct loans in fiscal year 1982, a higher figure for that year than the amount recommended by the Office of Management and Budget, Eximbank policies were so formulated as to bring actual loans made very near the OMB recommended level, and $1 billion short of the amount authorized by the Congress. With more than $1 billion of U.S. export sales lost in fiscal year 1982 due to insufficient Eximbank support, the Committee recognizes the need for greater independence for the Eximbank in order for it to meet its responsibilities to provide American exporters with competitive financing in the face of foreign government subsidized export credit competition.

Moreover, section 103 provides that the terms of office of the Directors are to be staggered, giving the Bank greater continuity. Currently, there is often a complete turnover of the Eximbank Board with each new administration, resulting in policy delays as a new Board familiarizes itself with past policies and commitments. The resultant but understandable transitional delays and confusion conflict directly with the ongoing needs of American exporters. Under provisions of section 103 only part of the Board would turn over at a time. Under the new provision, the President would be able to appoint a new Chairman and Vice Chairman to coincide with the Presidential term of office and, within two years, the President would have the power to appoint an entirely new Board.

Report on authority; extension

An important factor in export trade competition is reliability. The Committee believes that an extension of the Export-Import Bank Act of 1945 for six years will give a clear indication to our exporters, potential purchasers of U.S. products, and our trade competitors, that the Export-Import Bank will be in business for as long as is necessary.

Moreover, section 104 provides the Bank with budgetary flexibility to respond to changing conditions in international trade. The Committee fully expects the Eximbank to recommend an increase in lending authority should lack of progress in the export credit talks, increased pressure on U.S. exporters from foreign official export credits,

or any other increase in demand for Eximbank resources make that necessary. Through this provision the Committee indicates its intention to respond favorably to any such appropriate requests. The Committee, in addition to its own receipt of the report, would expect that the report would be submitted to the Committee on Appropriations in the Senate, as well as to the appropriate committees in the House of Representatives.

Matching credits; prohibition of imports supported by export credits inconsistent with the OECD arrangement

The Committee has been concerned with the potential that could exist for foreign penetration of our domestic market by means of officially subsidized export credits. Recent experience has revealed inadequacies in current statutory provisions for dealing with this problem. The Committee decided to increase the options available to a U.S. producer facing competition in our domestic market from a foreign producer offering official cut-rate financing.

Section 105 strengthens the current provisions of section 1912 of the Export-Import Bank Act Amendments of 1978 (P.L. 95–630) by making them more timely and more predictable. The Committee rejects the interpretation by the Secretary of the Treasury that current law requires export financing to be the determining factor in a sales competition in order for the Eximbank to be authorized to provide financing. Current law states that foreign export financing by only a determining factor. To remove all doubt, however, the Committee decided to change the requirement, so that financing by only a significant factor in order for the Secretary of the Treasury to authorize Eximbank support for the domestic producer.

Moreover, section 105 requires the Secretary of the Treasury to make his determination with 30 days of his receipt of a request. The Export-Import Bank, once authorized by the Treasury Secretary, would be required to provide financing. Such financing, as with other Eximbank programs, should be competitive with the foreign offer so as to neutralize financing as a factor in the sales competition.

The Committee does not anticipate that this provision will result in any significant drain on Eximbank resources for the financing of sales in the domestic market. Rather, it is the intention of the Committee that the existence of an improved section 1912 will be a sufficient deterrent to foreign producers seeking to penetrate the United States economy through officially subsidized export credits.

As amended, the Secretary of the Treasury may issue such authorization to Eximbank to provide guarantees, insurance, and credits to competing U.S. sellers only if he determines that:

(1) The availability of foreign official noncompetitive financing is likely to be a significant factor in the sale, and

(2) The foreign noncompetitive financing has not been withdrawn as of the date the Bank is authorized to provide competitive financing.

The purpose of section 105 is to discourage the use of subsidized financing by foreign governments to support sales in the United States market. It is one of several policy instruments available for this purpose, including the countervailing duty law, bilateral consultations, et cetera.

While section 105 is intended to make the provisions of section 1912 of the act more timely and more predictable, section 105 is not intended to make the provision of Eximbank financing to U.S. entities automatic. The statute remains a tool for the enforcement of U.S. trade policy, not an entitlement program for any U.S. purchaser who can point to an offer of subsidized financing. If the Secretary of the Treasury determines that section 1912 is being abused, he should not issue an authorization pursuant to this section.

To strengthen this deterrent effect, the Committee chose to provide U.S. producers with an alternative. When faced with competition in our domestic market from foreign producers offering officially subsidized cut-rate financing, the U.S. producer can either seek assistance from the Eximbank under provisions of section 1912, or seek relief under the provisions of section 109 of the bill. Section 109 would, in effect, allow the Secretary of Commerce to forbid importation into the United States of a product whose sale was made possible through foreign officially subsidized export financing at a rate below that stipulated in the "Arrangement on Guidelines for Officially Supported Export Credits" of the Organization for Economic Cooperation and Development and is used to gain an advantage in the sale of the product or service concerned.

Report to Congress

Under Section 2(b)(3) of the Export-Import Bank Act of 1945, no loan or guarantee or combination of the two of $100 million or more may be finally approved by the Bank unless the Bank has submitted to the Congress a detailed statement explaining the transaction. Such report is to be submitted at least 25 days before final approval.

This $100 million figure has not been increased for five years, although inflation during that time period has significantly driven up contract prices. If the Act were extended for the six years as recommended by the Committee, without any amendation of this figure, that would result in the figure not having been revised for eleven years.

The Committee feels that this would place an increased administrative burden on both the Congress and the Bank without any corresponding oversight benefits. Therefore, in section 106, the Committee revises this figure to $250 million.

Exports of services; other products

Services represent the fastest growing sector of American exports. The Committee, noting some reluctance on the part of the Bank to provide support for service exports, in section 207 amends the Eximbank charter to make it clear that service exports are to receive the same and equal treatment as the Bank gives to other export sectors.

In this same regard, the Committee also notes that the Bank has been reluctant to issue or guarantee loans for the financing of housing built by United States companies for export. The Committee would indicate to the Bank its intention that where appropriate the Bank should be willing to provide competitive financing for such exports as it now does for other U.S. exports.

Small business needs

The Committee is aware of the need for small business to take greater advantage of Eximbank programs. Although thousands of small

businesses are benefited by Eximbank assistance as subcontractors for the larger companies that use Eximbank programs, the Committee notes that many small businesses have been discouraged from direct use of Eximbank resources because of the uncompetitive nature of Eximbank programs for small business. The Committee has taken several steps to address these concerns.

First of all, by directing the Bank to provide U.S. exporters with competitive financing, the Committee has made it clear in its revision of the charter that this competitiveness mandate extends to all of the Bank's programs, including those that would be of use for small businesses. Representatives of small business have indicated to the Committee that their chief problem has not been the adequacy of Eximbank resources but rather the fact that those resources have been made available to small businesses on uncompetitive terms. Thus the Committee's amendment to the charter in section 101 of the bill addresses this paramount small business problem.

To further ensure that the Bank is responsive to small business needs the Committee provides, in section 108, language stressing the need for the Bank to provide assistance to small business exporters, and to that end directs the Chairman of the Eximbank Board to designate one of the Directors of the Bank to ensure that the Bank carries out its responsibilities toward small business.

Mixed credit export subsidies

In the hearing on March 22, 1983, before the Subcommittee on International Finance and Monetary Policy it was reported that the Export-Import Bank had conducted a study of sales lost in 1982 due to foreign official export credit competition. This Eximbank study identified $900 million of lost sales. Nearly half of these were lost to foreign competitors offering mixed credits, that is export financing mixed with foreign aid moneys. When questioned about these losses, Bank Chairman William Draper said that the Bank currently does not have a program to match this kind of competition.

This is a particularly pernicious form of official export financing that seeks to hide predatory trade financing behind the facade of development assistance. In testimony before the Subcommittee on International Finance and Monetary Policy on March 22, 1983, Assistant U.S. Trade Representative William Krist reported that the use of mixed credits is on the rise. The Committee anticipates that this trend may continue as other forms of official export credits become more circumscribed by the OECD Arrangement on Officially Supported Export Credits.

The OECD Arrangement negotiations have thus far yielded very modest results in curbing this mixed credit practice. The Committee believes one major reason for this lack of progress has been the inability of the United States to counter such offers.

Title II of the bill will strengthen the hands of our negotiators in their efforts to limit and eventually eliminate this practice. First of all, the will of the Congress is made clearly manifest by direct instructions to our negotiators to reach agreement to bring this mixed credit practice under control. Second, our negotiators are backed by the authorization given to the Eximbank and the Agency for International Development to establish a mixed credit program. The Committee does

not foresee that this program will result in any additional spending by the two agencies. A selective use of this mixed credit program should significantly enhance the efforts of our negotiators to reach agreement toward eliminating mixed credits as a factor in international trade.

Without this provision, however, American exporters would increasingly be left without defense against this predatory and pernicious mechanism of officially-subsidized trade financing known as mixed credits.

FURTHER CONSIDERATIONS

The Committee is concerned that existing Eximbank guidelines for the procurement of insurance in connection with export transactions assisted by Bank loans or loan guarantees have no mechanism to deal with client countries invoking discriminatory laws or business practices to compel the placement of such insurance with local insurance companies. Types of foreign practices which have resulted in discrimination against U.S. insurers include government-owned insurance monopolies, laws or regulators requiring that insurance business be placed with locally-owned companies and administrative or market practices which favor local insurance carriers and serve to deny U.S. carriers an opportunity to compete effectively. Lost business opportunities for U.S. insurers as a result of these discriminatory practices have been conservatively estimated to exceed $200 million annually on Eximbank financed projects.

The Committee strongly believes that recipients of U.S. export assistance through the Eximbank should provide equal and non-discriminatory access to U.S. companies to compete for the insurance business associated with such transactions. It is the Committee's intent that the Bank review its existing policies and programs to determine whether changes may be needed to ensure such equal and non-discriminatory access. The Committee further calls on the Bank, in cooperation with the U.S. Trade Representative and the appropriate agencies of the Departments of State, Treasury, and Commerce, to seek the cooperation of foreign governments to remove existing obstacles to equal and non-discriminatory bidding for insurance related to transactions assisted by the Bank.

The Committee is concerned that the Bank's procedures for dealing with the adverse impact on the U.S. economy of Eximbank-supported projects be reviewed and, if necessary, strengthened. In recent years there has been a growing trend among the Western industrialized nations to use officially-subsidized export credits to support fundamentally uneconomic projects in the developing world.

The Committee notes that such practices are detrimental not only to the developing nations themselves but also to the economic health and viability of key industries in the United States, such as the copper and steel industries. In recent years such industries have been adversely affected by world overproduction of their products. The Committee calls on the Bank to review its own procedures for assessing the economic viability of such projects in the developing world and to strengthen its procedures, where necessary.

It would also be appropriate for the U.S. negotiators at the OECD export credit negotiations to raise this issue and to try to achieve a multilateral agreement to cease the funding of fundamentally un-

economic mining, processing, and manufacturing projects in the developing world. It is only through such an international agreement that this problem can be solved in the foreseeable future. Such a goal should be a high priority in future negotiations within the OECD.

SECTION-BY-SECTION ANALYSIS

Short title

This provides that the legislation may be cited as the "Export-Import Bank Amendments of 1983."

Competitive mandate

Section 101 amends the Export-Import Bank Act of 1945 through clarification and emphasis that the first and overriding priority of the Bank is to be fully competitive in all its programs with the officially supported export financing of foreign competitors. The Bank would consider its average cost of money as one factor in its determination of interest rates, but only to the extent that this does not conflict with the Bank's primary mandate of full competitiveness.

Advisory committee

Section 102 reestablishes the Advisory Committee which expired in 1979. This Committee will consist of twelve members and will broadly represent production, commerce, finance, agriculture, labor, services, and State government. The Advisory Committee will meet at least once per quarter, and will semiannually report to Congress on the Bank's performance in providing competitive financing to expand U.S. exports. The Bank would establish procedures to allow, on a rotating basis, members of the Advisory Committee to attend the meeting of the Bank's Board of Directors.

Terms of directors

Section 103 provides for fixed terms of office for the Directors of the Bank. An arrangement of staggered terms for the Directors would be established, whereby the President and First Vice President of the Bank will have terms that coincide with that of the U.S. President, while the other three Directors would have terms that begin in the middle of a four year Presidential term.

Report on authority, extension

Section 104 amends the Export-Import Bank Act of 1945, requiring the Bank to determine by March 31 of each year if additional authority is necessary to meet its obligations. The Bank must submit in a report to Congress by April 15 of each year its determination of needed authority together with a request for this increased funding.

The Act would also be extended to September 30, 1989.

Matching credits

Section 105 amends Section 1912 of the Export-Import Bank Act Amendments of 1978 by requiring that Treasury Secretary respond within 30 days when investigating whether foreign sales to the U.S. are offered with non-competitive financing. In addition, the Treasury Secretary would need to determine whether such foreign official financing is a "significant" factor in the sales competition, rather than a "determining" factor as provided in current law. The Eximbank would

be required to provide financing under this provision if so authorized by the Treasury Secretary.

Report to Congress

Section 106 amends the Export-Import Bank Act of 1945 by raising the threshold for a loan and/or guarantee which the Bank must report to Congress from the current $100 million to $250 million.

Export of Services

Section 107 directs the Bank as a matter of policy to give service exports full and equal consideration with other exports in its carrying out of its programs. The Banks is directed to include a summary of its programs regarding services in its semiannual report.

Small business needs

Section 108 amends the current Act by providing a specific policy for Eximbank to encourage the participation of small business in international commerce, particularly through Eximbank programs. The Bank Chairman is required to designate a member of the Board of Directors to insure that the Bank's resources are appropriately used to the maximum extent for small business. This section adds greater emphasis for the Bank to provide greater assistance to the small business sector.

Prohibition of imports supported by export credits inconsistent with the OECD arrangements on export credits

Section 109 provides an alternative mechanism to that in Section 1912 of the Export-Import Bank Act Amendments of 1978 to defend U.S. producers against imports into the United States enjoying officially subsidized non-competitive financing. Unless an inquiry has commenced under Section 105, the Secretary of Commerce may receive a request to review the terms of foreign official export credits for the product or service in question. Commerce must complete its inquiry within 30 days. If the financing is subsidized and at terms and conditions inconsistent with the terms and conditions allowable under the OECD Arrangement, and are used to gain an advantage in the sale of the products or services concerned; then the Secretary of Commerce will publish his findings in the Federal Register and direct the Commissioner of Customs to prohibit the import into the United States of the product or service involved.

Title II—Mixed Credit Export Subsidies

Short title

Section 201 provides that this section of the legislation may be cited as the "Trade and Development Enhancement Act of 1983."

Statement of purpose

Section 202 declares the purpose for this Act as follows:

1. To expand U.S. employment and economic growth by increasing U.S. exports to markets in the developing world;

2. To stimulate the economic development of countries in the developing world by improving their access to credit for imports from the U.S.;

3. To neutralize foreign predatory financing of exports in competition with U.S. exports; and

4. To encourage foreign governments to enter into agreements with the U.S. to eliminate government mixed credits for exports.

Negotiating mandate

Section 203 would require the President to pursue negotiations to ultimately eliminate official mixed credit financing. Interim negotiating objectives would include:

1. To define various forms of mixed credits;

2. To phase out the use of government mixed credits by an established date;

3. To set rules to prevent establishment of official practices having the same effect as mixed credits;

4. To raise the amount of the allowable foreign aid component of mixed credits to a minimum of 50 percent;

5. To improve notification procedures so that all forms of mixed financing are reported;

6. To prohibit the use of mixed financing for production facilities for goods which are in structural oversupply in the world.

Establishment of a mixed financing program in the U.S. Export-Import Bank

Section 204 would establish a program of mixed financing for U.S. exports in cooperation with the Agency for International Development (AID) and with private financial institutions as appropriate. The program may include the combined use of Eximbank credits, loans, or guarantees with concessional financing or grants provided by AID. The program could also involve Eximbank credits, loans, or guarantees with private sector financing. These arrangements would only be used to match similar, specific, mixed financing offers used by foreign government supported exporters in competition with U.S. exporters. Additionally, the U.S. exports would have to be the lowest cost product or service in order to qualify for this type of Eximbank assistance. This section also authorizes the Eximbank Chairman to establish a fund to carry out this program.

Establishment of a mixed financing program in the Agency for International Development

Section 205 would direct the Administrator of the Agency for International Development to establish within the Agency a program of mixed financing for U.S. exports in cooperation with Eximbank and with private financial institutions, as appropriate. The program may include the combined use of Eximbank credits, loans, or guarantees with concessional financing or grants provided by AID. The program could also include a combination of concessional financing or grants offered by AID with private institution financing.

These arrangements would only be used to match similar, specific financing offers used by foreign government supported exporters in competition with U.S. exporters. The U.S. exports would have to be the lowest cost product or service and would be expected to contribute to the development objectives of the importing country. This section would also authorize the Administrator of AID to draw on Economic Support funds and to establish a fund to carry out this program.

Appointment of a mixed fund coordinator

Section 206 directs the President to appoint a Mixed Financing Coordinator to coordinate and insure the implementation of the mixed fund program.

Authorization of appropriations

Section 207 authorizes such sums as may be necessary to carry out this title.

Definitions

Section 208 lists definitions for mixed financing, government mixed credits, public-private cofinancing, blending of financing, and parallel financing as used in this legislation.

Title III—Amendments to the Export Trading Company Act of 1982

Section 301 amends section 206 of the Export Trading Company Act by availing Eximbank assistance to Export Trading Companies which deal in services as well as those which trade in goods.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 12, 1983.

1. Bill number: S. 869.
2. Bill title: Export-Import Bank Amendments of 1983.
3. Bill status: As ordered by the Senate Committee on Banking, Housing, and Urban Affairs on April 28, 1983.
4. Bill purpose: Title I of the bill amends the Export-Import Bank Act of 1945 to: extend the Bank's authority to write new loans, guarantees, and insurance, to the extent or in such amounts as are provided in appropriations acts, from September 30, 1983 through September 30, 1989; mandate that interest rates and terms on the Bank's programs be fully competitive with export of other countries; and otherwise amends Export-Import Acts.

Title II requires the Export-Import Bank and the Agency for International Development to each establish a program of mixed financing for U.S. exports, requires the President to coordinate and ensure the implementation of the mixed financing programs, and authorizes the appropriation of such funds as may be necessary to carry out the programs.

5. Estimated cost to the Federal Government: Section 104(b) extends the Bank's authority to write new loans, guarantees, and insurance from September 30, 1983 through September 30, 1989.

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Estimated direct loan obligations	4, 606	4, 826	5, 038	5, 240	5, 438
Estimation loan guarantee commitments	9, 423	9, 873	10, 305	10, 719	11, 124
Estimated outlays	301	1, 601	2, 629	2, 984	2, 943

Section 207 authorizes the appropriation of such funds as may be necessary to carry out programs of mixed credit export subsidies in the Export-Import Bank and the Agency for International Development.

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Estimated authorization	300	300	.....	.....	.....
Estimated outlays	25	110	159	108	48

Basis of estimate: The estimate assumes enactment of this legislation by September 30, 1983 and provision for the credit programs and estimated authorization in subsequent appropriation acts.

Section 7(a)(1) of the Export-Import Bank Act of 1945, as amended, limits spending authority under the Act to such extent or in such amounts as are provided in appropriations acts. The direct credit and guaranteed loans levels assumed in this estimate are CBO baseline levels. The estimate uses historical loan disbursement, repayment, and cancellation rates and current CBO economic assumptions for interest rates for the cost of the Bank's borrowings.

With declining interest rates projected in current CBO economic assumptions and minimum terms and conditions in the Arrangements on Guidelines for Officially Supported Export Credits of the Organization for Economic Cooperation and Development, new direct loans written under the extension of authority provided in section 104(b) of this bill are estimated to make a positive contribution to the Bank's net income even with the mandate in section 101 of this bill that all the Bank's support U.S. exports at rates and on terms and conditions which are fully competitive with exports of other countries. Should the minimum terms and conditions in the Arrangement be lowered or the Arrangement breakdown, or should interest rates for the Bank's borrowings rise, the positive contribution to net income could be eliminated or reversed, and the $250 to $200 million losses estimated for the direct loan program for fiscal years 1983 and 1984 could continue or grow.

Title II requires the establishment of a mixed credit financing programs within the Export-Import Bank and the Agency for International Development and authorizes such funds as may be necessary for fiscal year 1984 and 1985 to carry out the program. Though the bill requires that such a program be established, the nature of the program is discretionary. Estimating of the cost of implementing the program is highly uncertain for a number of reasons. There is no estimate of the total value of mixed credits currently being provided by other exporting countries, nor is there an estimate of the proportion of this amount U.S. exporters could make a successful competing bid. To a great extent the costs of the program depend upon the reactions of other exporting to the creation of the program. The Ex-Im Bank estimates that the value of mixed credits reported in 1982 was over $3 billion. The CBO estimate assumes that 25 percent of these could be won by U.S. exporters. (Twenty-five percent is the low range for conversion of Export-Import Bank's preliminary commitments.) The estimate assumes that in order to provide an average concessionably of 25 percent, 40 percent of the value of the individual cases would be provided as low interest loans with terms no more concessional than minimums established in section 122(b) of the Foreign Assistance Act of 1961, as amended.

The estimate assumes the purpose of the Title is to combat predatory export financng engaged in by other exporting nations and not a means of extending planned foreign aid programs. The purposes for which assistance programs administered by the Agency for International Development are authorized and their extensive earmarkings and country allocations does not closely match the purposes stated in Title II. The estimated authorizations for this Title are assumed to be in addition to amounts authorized for the Agency for International Development in other legislation. Outlays are estimated using historical disbursement rates for Export-Import Bank direct loans and repayment rates for development loans.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Joseph C. Whitehill.
10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

REGULATORY IMPACT

Pursuant to paragraph 5 of rule XXIX of the Senate, the Committee estimates there will be no regulatory impact in carrying out the provisions of this legislation.

ADDITIONAL VIEWS OF MR. WILLIAM PROXMIRE

I dissented from the Committee's decision to change the mandate of the Eximbank to put primary emphasis on competitiveness in export financing at the expense of considering the costs to taxpayers of providing export subsidies. I believe this amendment to the charter of Eximbank sends out the wrong signal at the wrong time to our trading partners and to our own business community as to the position of the United States on export subsidies.

What needs to be made explicitly clear is that the policy of the United States is against export subsidies by government export financing agencies whether by our own Eximbank or the export banks of our western European allies or of the Japanese. This is the policy of the Committee. The Committee believes that by changing the mandate of Eximbank to give primary emphasis to subsidies that our trading partners will not subsidize their own exports because they will know the United States is prepared to fight fire with fire. I believe along with the Administration that Chairman Draper of Eximbank has succeeded in practically eliminating subsidies on the world export scene and that we should not complicate his job unnecessarily by giving him a mandate which may be counterproductive and one which he does not desire.

To a great extent, the Committee's action commits the United States to fighting the last war, and a war that has already been largely won. Chairman Draper came into office facing two severe problems at Eximbank. Exim faced severe capital losses over the long term because the cost of its funds was greater than the interest it charged on its loans. At the same time our Western European and Japanese trading partners were subsidizing their exports forcing the United States into a similar position. Chairman Draper did two things in response. He raised Exim's lending rates to lessen Exim losses and he renegotiated an increase on the export rates of the Organization of Economic Cooperation and Development International Arrangement on Export Credits. Chairman Draper testified: "On January 18th of this year (1983), we reduced Eximbank's rates to the Arrangement minimums, removing the last differential between our competitors' rates and our rates."

Chairman Draper further stated: "we have largely succeeded in our efforts to do away completely with the subsidy element in export credit financing." Assistant Secretary of the Treasury Leland supported Chairman Draper with his testimony that "Eximbank has been and is competitive." He also testified that:

> The Administration believes that efforts to strengthen the competitiveness mandate are unnecessary. In formulating Eximbank policy, we recognize that it is very important for Eximbank to be competitive. Eximbank already provides

financing on terms and conditions which enable U.S. suppliers to compete for export sales. Revising the present mandate could imply that the Bank must exactly match foreign subsidies (including foreign aid) in all cases. This would be potentially costly and undermine the Administration's flexibility. First, it would make it more difficult for the Administration to limit the cost of export subsidies during periods of inflation, thereby sheltering exports relative to other sectors of the economy. Secondly it would permanently lock Eximbank into providing subsidized financing. U.S. government export credit subsidies are costly and are only justified if they are carefully targeted, explicitly temporary, and aimed at the strategic purpose of convincing other countries to reduce trade distortions. Finally, it would undermine our flexibility to develop different approaches toward negotiating improvements in export credit arrangements.

I agree with Assistant Secretary Leland that Congress should not at this stage complicate our ability to negotiate improvements in export credit arrangements. Exim now has the flexibility under its existing mandate to consider costs of funds and to be competitive where necessary. I am very concerned that the Committee may have unduly damaged this flexibility. I am also concerned that having so recently succeeded in negotiations with the OECD under the existing mandate that we now send out a signal by changing Exim's mandate that the United States is about to engage in a trade war with our western European and Japanese allies. I trust that as this legislation proceeds forward in the Senate and in Conference with the House subsequently that we shall clarify our policy unmistakably on this point.

WILLIAM PROXMIRE.

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